



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 04-80
July 29, 2014

WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES

PURPOSE: This Procurement Notice (PN) revises the NASA FAR Supplement (NFS) to add whistleblower protections for contractor employees in accordance with 10 USC 2409. This PN adds subpart 1803.9 to the NASA FAR Supplement and makes changes to 1816.307 to address allowability of costs associated with whistleblower proceedings.

BACKGROUND: Recent statutes made extensive changes to 10 USC 2409, Contractor Employees: protection from reprisal or disclosure. The statutes set forth NASA-specific requirements for whistleblower protections that are different from the FAR requirements. Section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) and section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) specify the process and procedures set forth in the attached NFS changes, and essentially extend to contractor employees the whistleblower rights that civil servants have when reporting fraud, waste, and abuse. The clause at 1852.302-71 requires contractors to inform their employees of their rights.

ACQUISITIONS AFFECTED BY CHANGES: The whistleblower protections described in 1803.9 became available to contractor employees with the enactment of the statutes in 2008 and 2013. This rule formalizes the processes and procedures in the NASA FAR supplement. The provisions and clauses that are included are applicable to all solicitations issued on or after the effective date of the interim rule, July 29, 2014, as published in the Federal Register, 79 FR 43958.

ACTIONS REQUIRED BY CONTRACTING OFFICERS: Contracting officers shall use the new clauses in all solicitations issued and contracts awarded on or after the effective date of the interim rule, July 29, 2014. In addition, because the whistleblower protections were effective on the dates the statutes were passed (Jan. 28, 2008) and (Jan. 2, 2013) contracting officers are encouraged to include the clauses when issuing major modifications to contracts that were awarded before July 29, 2014, in accordance with FAR 1.108(d)(3).

CLAUSE CHANGES: 1852.203-71 and 1852.216-90 are added.

PARTS AFFECTED: Parts 1803, 1816, and 1852.

TYPE OF RULE AND PUBLICATION DATE: These changes were published as an interim rule in the Federal Register on July 29, 2014, 79 FR 43958.

HEADQUARTERS CONTACT: Leigh Pomponio, Contract Management Division; 202-358-0592, email: leigh.pomponio@NASA.gov

//S//

Ronald Poussard
Director, Contract Management
Division

Enclosures

PART 1803
IMPROPER BUSINESS PRACTICES
AND PERSONAL CONFLICTS OF INTEREST

TABLE OF CONTENTS

| | | |
|----------------|----------------------|---|
| SUBPART | <u>1803.1</u> | SAFEGUARDS |
| 1803.101 | | Standards of conduct. |
| 1803.101-1 | | General. |
| 1803.101-2 | | Solicitation and acceptance of gratuities by Government personnel. |
| 1803.104 | | Procurement integrity. |
| 1803.104-1 | | Definitions. |
| 1803.104-4 | | Disclosure, protection, and marking of contractor bid or proposal information and source selection information. |
| 1803.104-7 | | Violations or possible violations. |
| 1803.104-70 | | Restrictions on NASA personnel participating in proposal evaluations or selection decisions. |
| SUBPART | <u>1803.2</u> | CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL |
| 1803.203 | | Reporting suspected violations of the Gratuities clause. |
| SUBPART | <u>1803.3</u> | REPORTS OF SUSPECTED ANTITRUST VIOLATIONS |
| 1803.303 | | Reporting suspected antitrust violations. |
| SUBPART | <u>1803.5</u> | OTHER IMPROPER BUSINESS PRACTICES |
| 1803.502 | | Subcontractor kickbacks. |
| SUBPART | <u>1803.6</u> | CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM |
| 1803.602 | | Exceptions. |
| SUBPART | <u>1803.7</u> | VOIDING AND RESCINDING CONTRACTS |
| 1803.704 | | Policy. |
| 1803.705 | | Procedures. |
| SUBPART | <u>1803.8</u> | LIMITATION ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS |
| 1803.804 | | Policy. |
| 1803.806 | | Processing suspected violations. |
| SUBPART | 1803.9 | CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS |

| | |
|-----------------|---|
| 1803.900 | Scope of subpart. |
| 1803.901 | Definition. |
| 1803.903 | Policy. |
| 1803.904 | Procedures for filing complaints. |
| 1803.905 | Procedures for investigating complaints. |
| 1803.906 | Remedies. |
| 1803.907 | Classified information. |
| 1803.970 | Contract clause. |

| | | |
|-----------|--------------------------------|--------------------|
| SUBPART | <u>1803.70</u> | IG HOTLINE POSTERS |
| 1803.7000 | | Policy. |
| 1803.7001 | | Contract clause. |

PART 1803
IMPROPER BUSINESS PRACTICES
AND PERSONAL CONFLICTS OF INTEREST

Subpart 1803.1--Safeguards

1803.101 Standards of conduct.

1803.101-1 General.

The statutory prohibitions and their application to NASA personnel are discussed in the Standards of Ethical Conduct for Employees of the Executive Branch, [5 CFR Part 2635](#), and the Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration, [5 CFR Part 6901](#). All NASA personnel involved in acquisitions shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218).

1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

Any suspected violations shall be reported promptly to the installation's Office of Inspector General.

1803.104 Procurement integrity.

1803.104-1 Definitions.

"Agency ethics official" means for Headquarters, the General Counsel and the Associate General Counsel for General Law, and for each center, the Chief Counsel.

1803.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties.

- (i) Personnel participating in source evaluation board (SEB) procedures (see [1815.370](#))

or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures, and personnel evaluating protests.

(ii) Personnel assigned to the contracting office.

(iii) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(iv) Small business specialists.

(v) Personnel assigned to counsel's office.

(vi) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the Department of Defense.

(vii) Personnel responsible for the review and approval of documents in accordance with the Master Buy Plan Procedure in [Subpart 1807.71](#).

(viii) Other Government employees authorized by the contracting officer.

(ix) Supervisors, at any level, of the personnel listed in paragraphs 1803.104-4(a)(i) through (viii).

(x) Duly designated ombudsman.

(c)(i) The originator of information that may be source selection information shall consult with the contracting officer or the procurement officer, who shall determine whether the information is source selection information. NASA personnel responsible for preparing source selection information as defined in [FAR 2.101](#) shall assure that the material is marked with the legend in [FAR 3.104-4\(c\)](#) at the time the material is prepared.

(ii) Unless marked with the legend "SOURCE SELECTION INFORMATION -- SEE FAR 2.101 and 3.104," draft specifications, purchase descriptions, and statements of work are not considered source selection information and may be released during a market survey in order to determine the capabilities of potential competitive sources (see [FAR Subpart 7.1](#)). All documents, once released, must remain available to the public until the conclusion of the acquisition.

1803.104-7 Violations or possible violations.

(a)(1) The Procurement Officer is the individual designated to receive the contracting officer's report of violations.

(b) The head of the contracting activity (HCA) or designee shall refer all information describing an actual or possible violation to the installation's counsel and inspector general staff and to the Assistant Administrator for Procurement.

(f) When the HCA or designee determines that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then that official shall submit a copy of the determination to the Assistant Administrator for Procurement simultaneous with transmittal to the Administrator.

1803.104-70 Restrictions on NASA personnel participating in proposal evaluations or selection decisions.

For acquisitions of any dollar value, an employee may not participate in a proposal evaluation or selection decision if the employee, or the employee's spouse or minor child, has any direct or indirect financial, beneficial, or employment interests in any company participating, or expected to participate, in the acquisition. Direct or indirect financial interests are determined through the employee filing of a Public or Confidential Financial Disclosure Report (SF-278 or OGE 450). Notwithstanding any information to the contrary on these forms, if the employee discloses a

financial interest in any dollar amount, the employee is prohibited from participating in the proposal evaluation and selection process.

Subpart 1803.2--Contract or Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

Any suspected violations of the clause at [FAR 52.203-3](#), Gratuities, shall be reported to the installation's Office of Inspector General.

Subpart 1803.3--Reports of Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations.

(b)(i) When offers are received that, in the opinion of the contracting officer, indicate possible antitrust violations, the contracting officer shall report the circumstances to the General Counsel, NASA Headquarters, through the Office of Procurement (Code HS). Reports should not be submitted automatically but only when there is reason to believe the offers may not have been arrived at independently. These reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth --

(A) The noncompetitive pattern or situation under consideration;

(B) Purchase experience in the same product or service for a reasonable period (one or more years) preceding receipt of the offers under consideration, including unit and total contract prices and abstracts of bids;

(C) Community of financial interest among offerors, insofar as it is known;

(D) The extent, if any, to which specification requirements or patents restrict competition;

(E) Any information available about the pricing system employed in offers believed to reflect noncompetitive practices; and

(F) Any other pertinent information.

(ii) Evidence of practices that, in the opinion of the General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States (see [FAR 3.303](#)).

(d) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Office of Procurement (Code HS). The report shall include the reasons for suspecting collusion. Code HS shall forward a copy to the NASA Office of the Inspector General.

Subpart 1803.5--Other Improper Business Practices

1803.502 Subcontractor kickbacks.

Contracting officers shall report suspected violations of the Anti-Kickback Act in accordance with [1809.470](#).

Subpart 1803.6--Contracts with Government Employees or Organizations Owned or Controlled by Them

1803.602 Exceptions.

The Assistant Administrator for Procurement has been delegated the authority to authorize an exception to the policy in [FAR 3.601](#). The Assistant Administrator for Procurement has

redelegated this authority to the heads of contracting activities (HCAs) for individual actions in the aggregate of \$100,000 and below, inclusive of follow-on acquisitions, with concurrence by the HCA's Office of Chief Counsel. All requests above the HCA's authority shall be forwarded to the Assistant Administrator for Procurement (Code HS) for approval.

Subpart 1803.7--Voiding and Rescinding Contracts

1803.704 Policy.

(a) The Assistant Administrator for Procurement has been delegated authority to void or rescind contracts when there is a final conviction for violation of 18 U.S.C. 201-224 (Bribery, Graft and Conflicts of Interest) relating to them.

1803.705 Procedures.

(a) Procurement officers shall make reports to the Assistant Administrator for Procurement (Code HS). The Assistant Administrator for Procurement is responsible for the actions, notices, and decisions required by [FAR 3.705](#)(c), (d), and (e).

Subpart 1803.8--Limitation on the Payment of Funds to Influence Federal Transactions

1803.804 Policy.

(b) Procurement officers shall forward one copy of each Disclosure of Lobbying Activities (SF-LLL) furnished pursuant to [FAR 3.803](#) to the Office of Procurement (Code HS). The original shall be retained in the contract file. Forms shall be submitted semi-annually by April 15th for the six-month period ending March 31st, and by October 15th for the period ending September 30th.

1803.806 Processing suspected violations.

The Assistant Administrator for Procurement (Code HS) is the designated official to whom suspected violations of the Act shall be referred.

Subpart 1803.9 – Contractor Employee Whistleblower Protections

1803.900 Scope of subpart.

This subpart applies to NASA instead of FAR subpart 3.9.

(a) This subpart implements 10 U.S.C. 2409 as amended by section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), section 842 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), and section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

(b) This subpart does not apply to any element of the intelligence community, as defined in 50 U.S.C. 3003(4). This subpart does not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure--

- (1) Relates to an activity or an element of the intelligence community; or**
- (2) Was discovered during contract or subcontract services provided to an element of the intelligence community.**

1803.901 Definition.

Abuse of authority, as used in this subpart, means an arbitrary and capricious exercise of authority that is inconsistent with the mission of NASA or the successful performance of a NASA contract.

1803.903 Policy.

(a) Policy. 10 U.S.C. 2409 prohibits contractors or subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (b) of this section, information that the employee reasonably believes is evidence of gross mismanagement of a NASA contract, a gross waste of NASA funds, an abuse of authority relating to a NASA contract, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a NASA contract (including the competition for or negotiation of a contract). Such reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(b) Entities to whom disclosure may be made:

- (1) A Member of Congress or a representative of a committee of Congress.
 - (2) The NASA Inspector General or any other Inspector General that has oversight over contracts awarded by or on behalf of NASA.
 - (3) The Government Accountability Office.
 - (4) A NASA employee responsible for contract oversight or management.
 - (5) An authorized official of the Department of Justice or other law enforcement agency.
 - (6) A court or grand jury.
 - (7) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- (c) Disclosure clarified. An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a NASA contract shall be deemed to have made a disclosure.
- (d) Contracting officer actions. A contracting officer who receives a complaint of reprisal of the type described in paragraph (a) of this section shall forward it to legal counsel and to the NASA Inspector General.

1803.904 Procedures for filing complaints.

(a) Any employee of a contractor or subcontractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 1803.903 may file a complaint with the Inspector General of NASA.

(b) A complaint may not be brought under this section more than three years after the date on which the alleged reprisal took place.

(c) The complaint shall be signed and shall contain--

- (1) The name of the contractor;
- (2) The contract number, if known; if not known, a description reasonably sufficient to identify the contract(s) involved;
- (3) The violation of law, rule, or regulation giving rise to the disclosure;
- (4) The nature of the disclosure giving rise to the discriminatory act, including the party to whom the information was disclosed; and

(5) The specific nature and date of the reprisal.

1803.905 Procedures for investigating complaints.

(a) Unless the NASA Inspector General makes a determination that the complaint is frivolous, fails to allege a violation of the prohibition in 1803.903, or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the NASA Inspector General will investigate the complaint.

(b) If the NASA Inspector General determines that a complaint merits further investigation, the NASA Inspector General will—

(1) Notify the complainant, the contractor alleged to have committed the violation, and the head of the Agency;

(2) Conduct an investigation; and

(3) Provide a written report of findings to the complainant, the contractor alleged to have committed the violation, and the head of the Agency.

(c) The NASA Inspector General –

(1) Will determine that the complaint is frivolous or will submit the report addressed in paragraph (b) of this section within 180 days after receiving the complaint; and

(2) If unable to submit a report within 180 days, will submit the report within the additional time period, up to 180 days, to which the person submitting the complaint agrees.

(d) The NASA Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is--

(1) Made with the consent of the person alleging reprisal;

(2) Made in accordance with 5 U.S.C. 552a (the Freedom of Information Act) or as required by any other applicable Federal law; or

(3) Necessary to conduct an investigation of the alleged reprisal.

(e) The legal burden of proof specified at paragraph (e) of 5 U.S.C. 1221 (Individual Right of Action in Certain Reprisal Cases) shall be controlling for the purposes of an investigation conducted by the NASA Inspector General, decision by the head of the Agency, or judicial or administrative proceeding to determine whether prohibited discrimination has occurred.

1803.6 Remedies.

(a) Not later than 30 days after receiving a NASA Inspector General report in accordance with 1803.905, the head of the Agency shall determine whether sufficient basis exists to conclude that the contractor has subjected the complainant to a reprisal as prohibited by 1803.903 and shall either issue an order denying relief or shall take one or more of the following actions:

(1) Order the contractor to take affirmative action to abate the reprisal.

(2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that

were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the Agency.

(b) If the head of the Agency issues an order denying relief or has not issued an order within 210 days after the submission of the complaint or within 30 days after the expiration of an extension of time granted in accordance with 1803.905(3)(ii), and there is no showing that such delay is due to the bad faith of the complainant—

(1) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint; and

(2) The complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under 10 U.S.C. 2409 in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this authority may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(c) Whenever a contractor fails to comply with an order issued by the head of agency in accordance with 10 U.S.C. 2409, the head of the Agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district

court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(d) Any person adversely affected or aggrieved by an order issued by the head of the Agency in accordance with 10 U.S.C. 2409 may obtain judicial review of the order's conformance with the law, and the implementing regulation, in the United States Court of Appeals for a

circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to chapter 7 of title 5, United States Code. Filing such an appeal shall not act to stay the enforcement of the order by the head of an agency, unless a stay is specifically entered by the court.

(e) The rights and remedies provided for in this subpart may not be waived by any agreement, policy, form, or condition of employment.

1803.907 Classified information.

Nothing in this subpart provides any rights to disclose classified information not otherwise provided by law.

1803.970 Contract clause.

Use the clause at 1852.203-71, Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts.

Subpart 1803.70--IG Hotline Posters

1803.7000 Policy.

PROCUREMENT NOTICE (PN) 04-80 REPLACEMENT PAGE

3:9

NASA requires contractors to display NASA hotline posters prepared by the NASA Office of Inspector General on those contracts specified in 1803.7001, so that employees of the contractor having knowledge of waste, fraud, or abuse, can readily identify a means to contact NASA's IG.

1803.7001 Contract clause.

Contracting officers must insert the clause at 1852.203-70, Display of Inspector General Hotline Posters, in solicitations and contracts expected to exceed \$5,000,000 and performed at contractor facilities in the United States.

PART 1816
TYPES OF CONTRACTS

TABLE OF CONTENTS

| | |
|---|---|
| SUBPART <u>1816.1</u> | SELECTING CONTRACT TYPES |
| 1816.104 | Factors in selecting contract types. |
| 1816.104-70 | Contract type for performance-based acquisition (PBA). |
| SUBPART <u>1816.2</u> | FIXED-PRICE CONTRACTS |
| 1816.202 | Firm-fixed-price contracts. |
| 1816.202-70 | NASA contract clause. |
| 1816.203 | Fixed-price contracts with economic price adjustment. |
| 1816.203-4 | Contract clauses. |
| SUBPART <u>1816.3</u> | COST-REIMBURSEMENT CONTRACTS |
| 1816.303-70 | Cost-sharing contracts. |
| 1816.306 | Cost-plus-fixed-fee contracts. |
| 1816.307 | Contract clauses. |
| 1816.307-70 | NASA contract clauses. |
| SUBPART <u>1816.4</u> | INCENTIVE CONTRACTS |
| 1816.402 | Application of pre-determined, formula-type incentives. |
| 1816.402-2 | Performance incentives. |
| 1816.402-270 | NASA technical performance incentives. |
| 1816.404 | Fixed-price contracts with award fees. |
| 1816.405 | Cost-reimbursement incentive contracts. |
| 1816.405-2 | Cost-plus-award-fee (CPAF) contracts. |
| 1816.405-270 | CPAF contracts. |
| 1816.405-271 | Base fee. |
| 1816.405-272 | Award fee evaluation periods. |
| 1816.405-273 | Award fee evaluations. |
| 1816.405-274 | Award fee evaluation factors. |
| 1816.405-275 | Award fee evaluation rating. |
| 1816.405-276 | Award fee payments and limitations. |
| 1816.406 | Contract clauses. |
| 1816.406-70 | NASA contract clauses. |
| SUBPART <u>1816.5</u> | INDEFINITE-DELIVERY CONTRACTS |
| 1816.504 | Indefinite quantity contracts. |
| 1816.505 | Ordering. |
| 1816.505-70 | Task Ordering. |
| 1816.505-71 | Task and delivery order contract ordering period. |
| 1816.505-72 | Task and delivery order contract performance periods. |
| 1816.506-70 | NASA contract clause. |

| | | |
|----------------|-------------------------------|---|
| SUBPART | 1816.6 | TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS |
| 1816.603 | | Letter contracts. |
| 1816.603-2 | | Application. |
| 1816.603-370 | | Approvals. |

PART 1816

TYPES OF CONTRACTS

Subpart 1816.1--Selecting Contract Types

1816.104 Factors in selecting contract types.

1816.104-70 Contract type for performance-based acquisition (PBA).

(a) PBA is defined in [FAR 2.101](#) and discussed in [FAR 37.6](#). Although [FAR Part 37](#) addresses services contracts, PBA is not limited to these contracts. PBA is the preferred way of contracting for all supplies and services at NASA. Generally, when contract performance risk under a PBA specification can be fairly shifted to the contractor to allow for the operation of objective incentives, a contract type with objectively measurable incentives (e.g., FFP, FPIF, or CPIF) is appropriate. However, when contractor performance (e.g., cost control, schedule, or quality/technical) is best evaluated subjectively using quantitative measures, a CPAF contract may be used.

(b) A PBA is a completion form of contract (something is accomplished). Term/level-of-effort, time-and-materials and labor hour contracts should include, when feasible, features that are performance-oriented. However, those contracts may not be characterized as PBA.

Subpart 1816.2--Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.

1816.202-70 NASA contract clause.

The contracting officer shall insert the clause at [1852.216-78](#), Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.203 Fixed-price contracts with economic price adjustment.

1816.203-4 Contract clauses.

(a) In addition to the approval requirements in the prescriptions at [FAR 52.216-2](#) through 52.216-4, the contracting officer shall coordinate with the installation's Deputy Chief Financial Officer (Finance) before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216-2 and 52.216-3 and paragraph (c)(4) of the clause at 52.216-4.

(d)(2) Contracting officers shall contact the Office of Procurement, Code HK, for specific guidance on preparing clauses using cost indexes. Such clauses require advance approval by the Assistant Administrator for Procurement. Requests for approval shall be submitted to the Headquarters Office of Procurement (Code HS).

Subpart 1816.3--Cost-Reimbursement Contracts

1816.303-70 Cost-sharing contracts.

(a) Cost-sharing with for-profit organizations.

(1) Cost sharing by for-profit organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal, and may be accepted in any other contract when offered by the proposing organization. The requirement for cost-sharing may be waived when the contracting officer determines in writing that the contractor has no commercial, production, education, or service activities that would benefit from the results of the research, and the contractor has no means of recovering its shared costs on such projects.

(2) The contractor's cost-sharing may be any percentage of the project cost. In determining the amount of cost-sharing, the contracting officer shall consider the relative benefits to the contractor and the Government. Factors that should be considered include --

- (i) the potential for the contractor to recover its contribution from non-Federal sources;
- (ii) the extent to which the particular area of research requires special stimulus in the national interest; and
- (iii) the extent to which the research effort or result is likely to enhance the contractor's capability, expertise, or competitive advantage.

(b) Cost-sharing with not-for-profit organizations.

(1) Costs to perform research stemming from an unsolicited proposal by universities and other educational or not-for-profit institutions are usually fully reimbursed. When the contracting officer determines that there is a potential for significant benefit to the institution cost-sharing will be considered.

(2) The contracting officer will normally limit the institution's share to no more than 10 percent of the project's cost.

(c) Implementation.

Cost-sharing shall be stated as a minimum percentage of the total allowable costs of the project. The contractor's contributed costs may not be charged to the Government under any other contract or grant, including allocation to other contracts and grants as part of an independent research and development program.

1816.306 Cost-plus-fixed-fee contracts.

(d) Completion and term forms.

(4) Term form contracts should include, when feasible, features that are performance-oriented. However, those contracts may not be characterized as PBA.

1816.307 Contract clauses.

(a)(1) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at [FAR 52.216-7](#), the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at [FAR 52.215-2](#), Audit and Records - Negotiation.

(b) In solicitations and contracts containing the clause at [FAR 52.216-8](#), Fixed Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(d) In solicitations and contracts containing the clause at [FAR 52.216-10](#), Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(g)(1) In paragraph (g)(2)(ii) of the Allowable Cost and Payment--Facilities clause at [FAR 52.216-13](#), the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215-2, Audit and Records - Negotiation.

1816.307-70 NASA contract clauses.

(a) The contracting officer shall insert the clause at [1852.216-73](#), Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303-70.

(b) The contracting officer shall insert the clause substantially as stated at [1852.216-74](#), Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at [1852.216-75](#), Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(d) The contracting officer shall insert the clause at [1852.216-81](#), Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.

(e) The contracting officer may insert a clause substantially as stated at [1852.216-87](#), Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts.

(f) When either FAR clause 52.216-7, Allowable Cost and Payment, or FAR clause [52.216-13](#), Allowable Cost and Payment--Facilities, is included in the contract, as prescribed at [FAR 16.307\(a\)](#) and (g), the contracting officer should include the clause at [1852.216-89](#), Assignment and Release Forms.

(g) As required by section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), use the clause at 1852.216-90, Allowability of Costs Incurred in Connection

With a Whistleblower Proceeding--

(1) In task orders entered pursuant to contracts awarded before September 30, 2013, that include the clause at FAR 52.216-7, Allowable Cost and Payment; and

(2) In contracts awarded before September 30, 2013, that--

(i) Include the clause at FAR 52.216-7, Allowable Cost and Payment; and

(ii) Are modified to include the clause at 1852.203-71, Requirement to Inform Employees of Whistleblower Rights, dated June 2013 or later.

Subpart 1816.4--Incentive Contracts

1816.402 Application of predetermined, formula-type incentives.

When considering the use of a quality, performance, or schedule incentive, the following guidance applies:

(1) A positive incentive is generally not appropriate unless —

(i) Performance above the target (or minimum, if there are no negative incentives) level is of significant value to the Government;

(ii) The value of the higher level of performance is worth the additional cost/fee;

(iii) The attainment of the higher level of performance is clearly within the control of the contractor; and

(iv) An upper limit is identified, beyond which no further incentive is earned.

(2) A negative incentive is generally not appropriate unless —

(i) A target level of performance can be established, which the contractor can reasonably be expected to reach with a diligent effort, but a lower level of performance is also minimally acceptable;

(ii) The value of the negative incentive is commensurate with the lower level of performance and any additional administrative costs; and

(iii) Factors likely to prevent attainment of the target level of performance are clearly within the control of the contractor.

(3) When a negative incentive is used, the contract must indicate a level below which performance is not acceptable.

1816.402-2 Performance incentives.

1816.402-270 NASA technical performance incentives.

(a) Pursuant to the guidelines in 1816.402, NASA has determined that a performance incentive shall be included in all contracts based on performance-oriented documents (see [FAR 11.101\(a\)](#)), except those awarded under the commercial item procedures of [FAR Part 12](#), where the primary deliverable(s) is (are) hardware with a total value (including options) greater than \$25 million. Any exception to this requirement shall be approved in writing by the head of contracting activity. Performance incentives may be included in hardware contracts valued under \$25 million acquired under procedures other than Part 12 at the discretion of the procurement officer upon consideration of the guidelines in 1816.402. Performance incentives, which are objective and measure hardware performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance, unless the contract type requires complete contractor liability for product performance (e.g., fixed price). In this latter case, a negative incentive is not required. In structuring the incentives, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance above and, when a negative incentive is used, below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to, when a negative incentive is included, minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, either positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when hardware performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract and a negative incentive is included, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the

maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(d) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several hardware items (e.g., multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

(e) In determining the value of the maximum performance incentives available, the contracting officer shall follow the following rules:

(1) For a CPFF contract, the sum of the maximum positive performance incentive and fixed fee shall not exceed the limitations in [FAR 15.404-4\(c\)\(4\)\(i\)](#).

(2) For an award fee contract.

(i) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(ii) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total earned award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total potential award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

(3) For cost reimbursement contracts other than award fee contracts, the maximum negative performance incentives shall not exceed the total earned fee under the contract.

1816.404 Fixed-price contracts with award fees.

Section 1816.405-2 applies to the use of FPAF contracts as if they were CPAF contracts. However, neither base fee (see 1816.405-271) nor evaluation of cost control (see 1816.405-274) apply to FPAF contracts.

1816.405 Cost-reimbursement incentive contracts.

1816.405-2 Cost-plus-award-fee (CPAF) contracts.

1816.405-270 CPAF contracts.

(a) Use of an award fee incentive requires advance approval by the Assistant Administrator for Procurement. Requests for approval, that include Determination & Findings (D&F) cited in paragraph (b) of this section, shall be submitted to Headquarters Office of Procurement, Program Operations Division.

(b) Contracting officers shall prepare a D&F in accordance with FAR 16.401(d) prior to using an award fee incentive. In addition to the items identified in FAR 16.401(e)(1), D&F's will include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives should not be used on contracts with a total estimated cost and fee less than \$2 million per year. Use of award fee incentive for lower-valued acquisitions may be authorized in exceptional situations such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(c) Except as provided in paragraph (d) of this section, an award fee incentive may be used in conjunction with other contract types for aspects of performance that cannot be objectively assessed. In such cases, the cost incentive is based on objective formulas inherent in the other contract types (e.g., FPI, CPIF), and the award fee provision should not separately incentivize cost performance.

(d) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

1816.405-271 Base fee.

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final ([1816.405-273\(a\)](#)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in conjunction with another contract type (e.g., CPIF/AF).

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is "satisfactory" or better. (See [1816.405-273](#) and [1816.405-275](#)) Pending final evaluation, base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is "unsatisfactory", all provisional base fee payments shall be refunded to the Government.

1816.405-272 Award fee evaluation periods.

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are offset by benefits accruing to the Government. Where practicable, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. In no case shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee contract shall be allocated to each of the evaluation periods. This allocation may result in an equal or unequal distribution of fee among the periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure.

1816.405-273 Award fee evaluations.

(a) *Service Contracts.* On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or "rolled-over," into subsequent periods.

(b) *End Item Contracts.* On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor

performance prior to contract completion, provide feedback to the contractor on the Government's assessment of the quality of its performance, and establish the basis for making interim award fee payments (see 1816.405-276(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as "Source Selection Information - See [FAR 3.104](#)".

1816.405-274 Award fee evaluation factors.

(a) Explicit evaluation factors shall be established for each award fee period. Factors shall be linked to acquisition objectives which shall be defined in terms of contract cost, schedule, and technical performance. If used, subfactors should be limited to the minimum necessary to ensure a thorough evaluation and an effective incentive.

(b) Evaluation factors will be developed by the contracting officer based upon the characteristics of an individual procurement. Cost control, schedule, and technical performance considerations shall be included as evaluation factors in all CPAF contracts, as applicable. When explicit evaluation factor weightings are used, cost control shall be no less than 25 percent of the total weighted evaluation factors. The predominant consideration of the cost control evaluation should be a measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c)(1) The technical factor must include consideration of risk management (including mission success, safety, security, health, export control, and damage to the environment, as appropriate) unless waived at a level above the contracting officer, with the concurrence of the project manager. The rationale for any waiver shall be documented in the contract file. When safety, export control, or security are considered under the technical factor, the award fee plan shall allow the following fee determinations, regardless of contractor performance in other evaluation factors, when there is a major breach of safety or security.

(i) For evaluation of service contracts under [1816.405-273\(a\)](#), an overall fee rating of unsatisfactory for any evaluation period in which there is a major breach of safety or security.

(ii) For evaluation of end item contracts under [1816.405-273\(b\)](#), an overall fee rating of unsatisfactory for any interim evaluation period in which there is a major breach of safety or security. To ensure that the final award fee evaluation at contract completion reflects any major breach of safety or security, in an interim period, the overall award fee pool shall be reduced by the amount of the fee available for the period in which the major breach occurred if an unsatisfactory fee rating was assigned because of a major breach of safety or security.

(2) A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(3) A major breach of security may occur on or off Government installations, but must be directly related to the work on the contract. A major breach of security is an act or omission by

the contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

(4) The Assistant Administrator for Procurement shall be notified prior to the determination of an unsatisfactory award fee rating because of a major breach of safety or security.

(d) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The Government shall take such situations into consideration when evaluating contractor cost control.

(e) Emphasis on cost control should be balanced against other performance requirement objectives. The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Therefore, evaluation of cost control shall conform to the following guidelines:

(1) Normally, the contractor should be given an unsatisfactory rating for cost control when there is a significant overrun within its control. However, the contractor may receive a satisfactory or higher rating for cost control if the overrun is insignificant. Award fee ratings should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government shall consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum award fee rating allocated for cost control, provided the adjectival rating for all other award fee evaluation factors is very good or higher (see [FAR 16.401\(e\)\(iv\)](#)).

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum rating allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award shall be given in this circumstance unless the average adjectival rating for all other award fee evaluation factors is satisfactory or higher.

(f) When an AF arrangement is used in conjunction with another contract type, the award fee's cost control factor will only apply to a subjective assessment of the contractor's efforts to control costs and not the actual cost outcome incentivized under the basic contract type (e.g. CPIF, FPIF).

(g)(1) The contractor's performance against the subcontracting plan incorporated in the contract shall be evaluated. Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, HUBZone small business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business concerns.

(2) The contractor's performance against the contract target for participation as subcontractors by small disadvantaged business concerns in the NAICS Major Groups designated by the Department of Commerce (see [FAR 19.201\(c\)](#)) shall also be evaluated if the clause at [FAR 52.219-26](#), Small Disadvantaged Business Participation - Incentive Subcontracting, is not included in the contract (see [FAR 19.1204\(c\)](#)).

(3) The contractor's achievements in subcontracting high technology efforts as well as the contractor's performance under the Mentor-Protégé Program, if applicable, may also be evaluated.

(4) The evaluation weight given to the contractor's performance against the considerations in paragraphs (g)(1) through (g)(3) of this section should be significant (up to 15 percent of available award fee). The weight should motivate the contractor to focus management attention to subcontracting with small, HUBZone, women-owned, veteran-owned, and service-disabled veteran-owned small business concerns, and with small disadvantaged business concerns in designated NAICS Major Groups to the maximum extent practicable, consistent with efficient contract performance.

(h) When contract changes are anticipated, the contractor's responsiveness to requests for change proposals should be evaluated. This evaluation should include the contractor's submission of timely, complete proposals and cooperation in negotiating the change.

(i) Only the award fee performance evaluation factors set forth in the performance evaluation plan shall be used to determine award fee scores.

(j) The Government may unilaterally modify the applicable award fee performance evaluation factors and performance evaluation areas prior to the start of an evaluation period. The contracting officer shall notify the contractor in writing of any such changes 30 days prior to the start of the relevant evaluation period.

1816.405-275 Award fee evaluation rating.

(a) All award fee contracts shall utilize the adjectival rating categories and associated descriptions as well as the award fee pool available to be earned percentages for each adjectival rating category contained in FAR 16.401(e)(iv).

(b) The following numerical scoring system shall be used in conjunction with the FAR adjectival rating categories and associated descriptions (see FAR 16.401(e)(iv)).

(1) **Excellent** (100-91)

(2) **Very good** (90-76)

(3) **Good** (75-51)

(4) **Satisfactory** (50)

(5) **Unsatisfactory** (less than 50) No award fee shall be paid for an unsatisfactory rating.

(c) As a benchmark for evaluation, in order to be rated "Excellent" overall, the contractor would typically be under cost, on or ahead of schedule, and providing outstanding technical performance.

(d) A weighted scoring system appropriate for the circumstances of the individual contract requirement should be developed. In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totaling 100. During the award fee evaluation, each factor is scored from 0-100 according to the ratings defined in 1816.405-275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80 x 60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

1816.405-276 Award fee payments and limitations.

(a) *Interim Award Fee Payments.* The amount of an interim award fee payment (see 1816.405-273(b)) is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that interim period less any provisional payments (see paragraph (b) of this subsection) made during the period.

(b) *Provisional Award Fee Payments.* Provisional award fee payments are payments made within evaluation periods prior to an interim or final evaluation for that period. Provisional payments may be included in the contract and should be negotiated on a case-by-case basis. For a service contract, the total amount of award fee available in an evaluation period that may be provisionally paid is the lesser of a percentage stipulated in the contract (but not exceeding 80 percent) or the prior period's evaluation score. For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score.

(c) *Fee Payment.* The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

1816.406 Contract clauses.

1816.406-70 NASA contract clauses.

(a) As authorized by [FAR 16.406\(e\)](#), the contracting officer shall insert the clause at [1852.216-76](#), Award Fee for Service Contracts, in solicitations and contracts when an award-fee contract is contemplated and the contract deliverable is the performance of a service.

(b) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216-77, Award Fee for End Item Contracts, in solicitations and contracts when an award fee contract is contemplated and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract. When the clause is used in a fixed-price award-fee contract, it shall be modified by deleting references to base fee in paragraphs (a), and by deleting paragraph (c)(1), the last sentence of (c)(4), and the first sentence of (c)(5).

(c) The contracting officer may insert a clause substantially as stated at 1852.216-83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216-84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216-85, Estimated Cost and Award Fee, in award-fee solicitations and contracts. When the contract includes performance incentives, use Alternate I. When the clause is used in a fixed-price award fee contract, it shall be modified to delete references to base fee and to reflect the contract type.

(f) As provided at 1816.402-270, the contracting officer shall insert a clause substantially as stated at 1852.216-88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than \$25 million. A clause substantially as stated at 1852.216-88 may be included in lower dollar value hardware contracts with the approval of the procurement officer.

Subpart 1816.5--Indefinite-Delivery Contracts

1816.504 Indefinite quantity contracts.

(a)(4)(ii) ID/IQ service contract values and task order values shall be expressed only in dollars.

(a)(4)(v) See [1815.7003](#).

1816.505 Ordering.

(a) (2) Task and delivery orders shall be issued by the contracting officer.

(b)(5) The Agency and installation ombudsmen designated in accordance with 1815.7001 shall review complaints from contractors on task order contracts and delivery order contracts.

1816.505-70 Task ordering.

(a) The contracting officer shall, to the maximum extent possible, state task order requirements in terms of functions and the related performance and quality standards such that the standards may be objectively measured.

(b) To the maximum extent possible, contracting officers shall solicit contractor task plans to use as the basis for finalizing task order requirements and enable evaluation and pricing of the contractor's proposed work on a performance based approach as described in 1816.104-70(a).

(c) Task order contract type shall be individually determined, based on the nature of each task order's requirements.

(1) Task orders may be grouped by contract type for administrative convenience (e.g., all CPIF orders, all FFP orders, etc.) for contractor progress and cost reporting.

(2) Under multiple awards, solicitations for individual task plans shall request the same pricing structure from all offerors.

(d) Any undefinitized task order issued under paragraph (f) of the clause at 1852.216-80, Task Ordering Procedure, shall be treated and reported as an undefinitized contract action in accordance with [1843.70](#).

1816.505-71 Task and delivery order contract ordering period.

(a) 10 U.S.C. 2304a establishes limitations on the ordering period of a task or delivery order contract awarded by NASA. The statute specifies that the ordering period may be for any period up to five years. This period may be subsequently extended for one or more successive periods pursuant to an option or contract modification. In no case may the ordering period exceed a total of ten years unless approved by the Deputy Chief Acquisition Officer.

(b) The deviation requirement at 1817.204(e)(iii) applies to a task or delivery contract with an ordering period of more than five years.

(c) Orders under GSA Federal Supply Schedule contracts must comply with the limitations in paragraph (a) of this subsection if the orders provide for the issuance of subsequent task or delivery orders.

(d) The limitations in paragraph (a) of this subsection do not apply to --

(1) Advisory and assistance service task order contracts (authorized by 10 U.S.C. 2304b). These contracts are limited by statute to 5 years, with the authority to extend an additional 6 months (see FAR 16.505(c));

(2) Definite quantity contracts; and

(3) Multi-agency contracts awarded by agencies other than NASA, DoD, or the Coast Guard.

1816.505-72 Task and delivery order contract performance periods.

(a) Performance of orders placed within the contract ordering period may extend for up to one year past the end of the ordering period if the contracting officer determines that performance of the order cannot reasonably be deferred to any planned follow-on contract.

(b) Orders that require performance of more than one year past the end of the ordering period must be approved by the Deputy Chief Acquisition Officer prior to issuance. Centers shall submit approval requests, with full rationale for the necessity of placing the order, to Code HS at least two weeks before the planned issuance of the order.

1816.506-70 NASA contract clause.

Insert the clause at 1852.216-80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. The clause is applicable to both fixed-price and cost-reimbursement type contracts. If the contract does not require 533M reporting (see [NPR 9501.2](#), NASA Contractor Financial Management Reporting), use the clause with its Alternate I.

Subpart 1816.6--Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.

1816.603-2 Application.

(a) Centers must ensure that NASA liabilities and commitments are minimized under letter contracts. When a letter contract is justified and program requirements can be severed into smaller, discreet efforts, the work authorized by the letter contract must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the letter contract and must be acquired through a separate fully priced and definitized contract action.

1816.603-370 Approvals.

(a)(1) The approval authority to issue a letter contract is --

(i) The Assistant Administrator for Procurement when the estimated value of the definitized contract is equal to or greater than the Master Buy Plan (MBP) submission threshold of [1807.7101](#);

(ii) The procurement officer when the estimated value of the definitized contract is below the MBP submission threshold; and

(iii) The Assistant Administrator for Procurement for any modification of an undefinitized letter contract approved by the procurement officer that increases the estimated value of the definitized contract to an amount equal to or above the MBP submission threshold. This approval must be obtained prior to issuing the modification.

(2) The procurement officer must sign all requests for approval by the Assistant Administrator for Procurement and submit them to Code HS.

(b) All requests for authority to issue a letter contract must include the following:

- (1) Contractor name and address.
- (2) Place of performance.
- (3) Contract number, including modification number, if applicable.
- (4) Brief description of the work or services to be performed.
- (5) Performance period or delivery schedule for both the letter contract and definitized contract.
- (6) Estimated value of the work authorized by the letter contract.
- (7) Estimated value of the definitized contract.
- (8) Contract type of the definitized contract.

PROCUREMENT NOTICE (PN) 04-80 REPLACEMENT PAGE

16:14

(9) A statement that the definitized contract will contain all required clauses or identification of approved specific clause deviations.

(10) Complete justification of the necessity for the letter contract, including the advantages to the Government and a description of the efforts to avoid its issuance or to minimize its scope.

(11) The definitization schedule described in [FAR 16.603-2\(c\)](#) expected to be negotiated with the contractor.

PART 1852
SOLICITATION PROVISIONS AND CONTRACT CLAUSES

TABLE OF CONTENTS

| | | |
|--------------------|---------------|--|
| 1852.000 | | Scope of part. |
| SUBPART | 1852.1 | INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES |
| 1852.101 | | Using Part 52. |
| 1852.103 | | Identification of provisions and clauses. |
| 1852.103-70 | | Identification of modified provisions and clauses. |
| 1852.104 | | Procedures for modifying and completing provisions and clauses. |
| SUBPART | 1852.2 | TEXTS OF PROVISIONS AND CLAUSES |
| 1852.203-70 | | Display of Inspector General Hotline Posters. |
| 1852.203-71 | | Requirement to inform employees of whistleblower rights. |
| 1852.204-75 | | Security Classification Requirements. |
| 1852.204-76 | | Security Requirements for Unclassified Information Technology Resources. |
| 1852.208-81 | | Restrictions on Printing and Duplicating. |
| 1852.209-70 | | Product Removal from Qualified Products List. |
| 1852.209-71 | | Limitation of Future Contracting. |
| 1852.209-72 | | Composition of the Contractor. |
| 1852.211-70 | | Packaging, Handling, and Transportation. |
| 1852.213-70 | | Offeror Representations and Certifications—Other Than Commercial Items. |
| 1852.213-71 | | Evaluation—Other Than Commercial Items. |
| 1852.214-70 | | Caution to Offerors Furnishing Descriptive Literature. |
| 1852.214-71 | | Grouping for Aggregate Award. |
| 1852.214-72 | | Full Quantities. |
| 1852.215-77 | | Preproposal/Pre-bid Conference. |
| 1852.215-78 | | Make or Buy Program Requirements. |
| 1852.215-79 | | Price Adjustment for "Make-or-Buy" Changes. |
| 1852.215-81 | | Proposal Page Limitations. |
| 1852.215-84 | | Ombudsman. |
| 1852.215-85 | | Proposal Adequacy Checklist |
| 1852.216-73 | | Estimated Cost and Cost Sharing. |
| 1852.216-74 | | Estimated Cost and Fixed Fee. |
| 1852.216-75 | | Payment of Fixed Fee. |
| 1852.216-76 | | Award Fee for Service Contracts. |
| 1852.216-77 | | Award Fee for End Item Contracts. |
| 1852.216-78 | | Firm Fixed Price. |
| 1852.216-80 | | Task Ordering Procedure. |
| 1852.216-81 | | Estimated Cost. |

PROCUREMENT NOTICE (PN) 04-80 REPLACEMENT PAGE
52:2

| | |
|--------------------|--|
| 1852.216-83 | Fixed Price Incentive. |
| 1852.216-84 | Estimated Cost and Incentive Fee. |
| 1852.216-85 | Estimated Cost and Award Fee. |
| 1852.216-87 | Submission of Vouchers for Payment. |
| 1852.216-88 | Performance Incentive. |
| 1852.216-89 | Assignment and Release Forms. |
| 1852.216-90 | Allowability of legal costs incurred in connection with a whistleblower proceeding. |
| 1852.217-70 | Property Administration and Reporting. |
| 1852.217-71 | Phased Procurement Using Down-Selection Procedures. |
| 1852.217-72 | Phased Procurement Using Progressive Competition Down-Selection Procedures. |
| 1852.219-73 | Small Business Subcontracting Plan. |
| 1852.219-74 | Use of Rural Area Small Businesses. |
| 1852.219-75 | Small Business Subcontracting Reporting. |
| 1852.219-76 | NASA 8 Percent Goal. |
| 1852.219-77 | NASA Mentor-Protégé Program. |
| 1852.219-79 | Mentor Requirements and Evaluation. |
| 1852.219-80 | Limitation on Subcontracting – SBIR Phase I Program. |
| 1852.219-81 | Limitation on Subcontracting – SBIR Phase II Program. |
| 1852.219-82 | Limitation on Subcontracting – STTR Program. |
| 1852.219-83 | Limitation of the Principal Investigator – SBIR Program. |
| 1852.219-84 | Limitation of the Principal Investigator – STTR Program. |
| 1852.219-85 | Conditions for Final Payment – SBIR and STTR Contracts. |
| 1852.223-70 | Safety and Health. |
| 1852.223-71 | Frequency Authorization. |
| 1852.223-72 | Safety and Health (Short Form). |
| 1852.223-73 | Safety and Health Plan. |
| 1852.223-74 | Drug- and Alcohol-Free Workforce. |
| 1852.223-75 | Major Breach of Safety or Security. |
| 1852.223-76 | Federal Automotive Statistical Tool Reporting. |
| 1852.225-8 | Duty-Free Entry of Space Articles. |
| 1852.225-70 | Export Licenses. |
| 1852.227-11 | Patent Rights--Retention by the Contractor (Short Form). |
| 1852.227-14 | Rights in Data--General. |
| 1852.227-17 | Rights in Data--Special Works. |
| 1852.227-19 | Commercial Computer Software--Restricted Rights. |
| 1852.227-70 | New Technology. |
| 1852.227-71 | Requests for Waiver of Rights to Inventions. |
| 1852.227-72 | Designation of New Technology Representative and Patent Representative. |
| 1852.227-84 | Patent Rights Clauses. |
| 1852.227-85 | Invention Reporting and Rights--Foreign. |
| 1852.227-86 | Commercial Computer Software--Licensing. |
| 1852.228-70 | Aircraft Ground and Flight Risk. |
| 1852.228-71 | Aircraft Flight Risks. |
| 1852.228-73 | Bid Bond. |

PROCUREMENT NOTICE (PN) 04-80 REPLACEMENT PAGE
52:3

| | |
|-------------|---|
| 1852.228-75 | Minimum Insurance Coverage. |
| 1852.228-76 | Cross-Waiver of Liability for International Space Station Activities. |
| 1852.228-78 | Cross-Waiver of Liability for Science or Space Exploration Activities Unrelated to the International Space Station. |
| 1852.228-80 | Insurance — Immunity From Tort Liability. |
| 1852.228-81 | Insurance — Partial Immunity From Tort Liability. |
| 1852.228-82 | Insurance — Total Immunity From Tort Liability. |
| 1852.231-70 | Precontract Costs. |
| 1852.231-71 | Determination of Compensation Reasonableness. |
| 1852.232-70 | NASA Modification of FAR 52.232-12. |
| 1852.232-77 | Limitation of Funds (Fixed-Price Contract). |
| 1852.232-79 | Payment for On-Site Preparatory Costs. |
| 1852.232-81 | Contract Funding. |
| 1852.232-82 | Submission of Requests for Progress Payments. |
| 1852.233-70 | Protests to NASA. |
| 1852.234-1 | Notice of Earned Value Management System. |
| 1852.234-2 | Earned Value Management System. |
| 1852.235-70 | Center for AeroSpace Information Technical Reports. |
| 1852.235-71 | Key Personnel and Facilities. |
| 1852.235-72 | Instructions for Responding to NASA Research Announcements. |
| 1852.235-73 | Final Scientific and Technical Reports. |
| 1852.235-74 | Additional Reports of Work -- Research and Development. |
| 1852.236-71 | Additive or Deductive Items. |
| 1852.236-72 | Bids with Unit Prices. |
| 1852.236-73 | Hurricane Plan. |
| 1852.236-74 | Magnitude of Requirement. |
| 1852.236-75 | Partnering for Construction Contracts. |
| 1852.237-70 | Emergency Evacuation Procedures. |
| 1852.237-71 | Pension Portability. |
| 1852.237-72 | Access to Sensitive Information. |
| 1852.237-73 | Release of Sensitive Information. |
| 1852.239-70 | Alternate Delivery Points. |
| 1852.241-70 | Renewal of Contract. |
| 1852.242-70 | Technical Direction. |
| 1852.242-71 | Travel Outside of the United States. |
| 1852.242-72 | Observance of Legal Holidays. |
| 1852.242-73 | NASA Contractor Financial Management Reporting. |
| 1852.242-78 | Emergency Medical Services and Evacuation. |
| 1852.243-70 | Engineering Change Proposals. |
| 1852.243-71 | Shared Savings. |
| 1852.243-72 | Equitable Adjustments. |
| 1852.244-70 | Geographic Participation in the Aerospace Program. |
| 1852.245-70 | Contractor requests for Government-provided property. |
| 1852.245-71 | Installation-accountable Government property. |
| 1852.245-72 | Liability for Government property furnished for repair or |

PROCUREMENT NOTICE (PN) 04-80 REPLACEMENT PAGE

52:4

| | | |
|----------------|---------------|--|
| | | other services. |
| 1852.245-73 | | Financial reporting of NASA property in the custody of contractors. |
| 1852.245-74 | | Identification and marking of Government equipment. |
| 1852.245-75 | | Property management changes. |
| 1852.245-76 | | List of Government property furnished pursuant to FAR 52.245-1. |
| 1852.245-77 | | List of Government property furnished pursuant to FAR 52.245-2. |
| 1852.245-78 | | Physical inventory of capital personal property |
| 1852.245-79 | | Records and disposition reports for Government property with potential historic or significant real value. |
| 1852.245-80 | | Government property management information. |
| 1852.245-81 | | List of available Government property. |
| 1852.245-82 | | Occupancy management requirements. |
| 1852.245-83 | | Real property management requirements. |
| 1852.246-70 | | Mission Critical Space System Personnel Reliability Program. |
| 1852.246-71 | | Government Contract Quality Assurance. |
| 1852.246-72 | | Material Inspection and Receiving Report. |
| 1852.246-73 | | Human Space Flight Item. |
| 1852.247-71 | | Protection of the Florida Manatee. |
| 1852.247-72 | | Advance Notice of Shipment. |
| 1852.247-73 | | Bills of Lading. |
| 1852.249-72 | | Termination (Utilities). |
| SUBPART | 1852.3 | PROVISION AND CLAUSE MATRIX |
| 1852.300 | | Scope of Subpart. |
| 1852.301 | | Solicitation Provisions and Contract Clauses (Matrix). |

PART 1852 **SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

1852.000 Scope of part.

This part, in conjunction with FAR Part 52, (a) sets forth the provisions and clauses prescribed in the NFS, (b) gives instructions for their use, and (c) presents a matrix listing the provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

Subpart 1852.1--Instructions for Using Provisions and Clauses

1852.101 Using Part 52.

(b)(2)(i)(B) NASA contracting offices prescribing or developing clauses shall ensure that the requirements of Subpart 1801.3 are met.

(e)(1) The NFS matrix in Subpart 1852.3 is formatted similarly to that in the FAR. The first page of the NFS matrix contains a key to column headings, a dollar threshold chart, and

requirement symbols. To fully determine the applicability of a provision or clause in the "required-when-applicable" and "optional" categories, Contracting Officers shall refer to the NFS text (cited in the matrix) that prescribes its use.

(4) The NFS matrix may be reproduced by field installations for the purpose of supplementing it with installation-developed provisions and clauses.

1852.103 Identification of provisions and clauses.

(b) Provisions and clauses prescribed by a field installation to satisfy its needs shall be identified as stated in paragraphs (b)(i) and (ii) of this section. Articles, formats, and similar language shall be treated as provisions and clauses for purposes of this section 1852.103.

(i) A provision or clause shall be numbered using a prefix, a base, and a suffix. The prefix shall be an alphabetical abbreviation of the installation name (e.g., ARC, DFRC, GRC, GSFC, JSC, KSC, LARC, MSFC, SSC, or SSPO). The base shall be a numeric value beginning with "52.2," with the next two digits corresponding to the number of the FAR or NFS subject part to which the provision or clause relates. The suffix shall be a hyphen and sequential number assigned within each part. NASA installations shall use suffix numbers from -90 to -199. For example, the first Johnson Space Center (JSC) provision or clause relating to Part 36 of the FAR or NFS shall be JSC 52.236-90, the second JSC 52.236-91, and so forth. Provisions and clauses shall be dated in accordance with FAR 52.101(f).

(ii) Contracting officers shall identify provisions and clauses as in the following examples:

(A) *1.2 BID ENVELOPES (GSFC 52.214-90) (AUGUST 1987)* This example is applicable when identifying the title of provisions and clauses in solicitations and contracts using the uniform contract format (UCF). The first number ("1.2") designates the UCF section and the sequential clause within that section. "GSFC 52.214-90" specifies the clause number.

(B) *GSFC 52.214-90--Bid Envelopes (AUGUST 1987)* This example is applicable in all instances in which the provision or clause citation is not associated with the UCF number.

(c) Contracting officers shall not number provisions and clauses developed for individual acquisitions only. For example, "F.3 Delivery Procedures for Special Hardware" cites the third clause in Section F of a contract using the UCF, but has no clause number or date identified with it, indicating that the clause was developed for the particular contract it appears in.

1852.103-70 Identification of modified provisions and clauses.

When a FAR clause or provision is included in a solicitation or contract and the NFS prescribes a modification, the title line shall identify the modification as shown below. This format shall be used both for incorporation by reference and when using full text.

"52.232-28 Electronic Funds Transfer Payment Methods (APR 1989)--as modified by
NASA FAR Supplement 1832.908(a)"

1852.104 Procedures for modifying and completing provisions and clauses.

NFS provisions and clauses shall not be modified unless authorized by the NFS. When authorized, contracting officers must comply with the procedures in FAR 52.104.

Subpart 1852.2--Text of Provisions and Clauses

1852.203-70 Display of Inspector General Hotline Posters.

As prescribed in 1803.7001, insert the following clause:

DISPLAY OF INSPECTOR GENERAL HOTLINE POSTERS

(JUNE 2001)

(a) The Contractor shall display prominently in common work areas within business segments performing work under this contract, Inspector General Hotline Posters available under paragraph (b) of this clause.

(b) Inspector General Hotline Posters may be obtained from NASA Office of Inspector General, Code W, Washington, DC, 20546-0001, (202) 358-1220.

(End of clause)

1852.203-71 Requirement to inform employees of whistleblower rights.

As prescribed in 1803.970, use the following clause:

REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS

(AUGUST 2014)

(a) The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections under 10 U.S.C. 2409, as described in subpart 1803.09 of the NASA FAR Supplement.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts.

(End of clause)

1852.204-75 Security Classification Requirements.

As prescribed in 1804.404-70, insert the following clause:

SECURITY CLASSIFICATION REQUIREMENTS

(SEPTEMBER 1989)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of _____ [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204-2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment ____ [Insert the attachment number of the DD Form 254].

(End of clause)

1852.204-76 Security Requirements for Unclassified Information Technology Resources.

As prescribed in 1804.470-4(a), insert the following clause:

**SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION
TECHNOLOGY RESOURCES**

(JANUARY 2011)

(a) The contractor shall protect the confidentiality, integrity, and availability of NASA Electronic Information and IT resources and protect NASA Electronic Information from unauthorized disclosure.

(b) This clause is applicable to all NASA contractors and sub-contractors that process, manage, access, or store unclassified electronic information, to include Sensitive But Unclassified (SBU) information, for NASA in support of NASA's missions, programs, projects and/or institutional requirements. Applicable requirements, regulations, policies, and guidelines are identified in the Applicable Documents List (ADL) provided as an attachment to the contract. The documents listed in the ADL can be found at:

<http://www.nasa.gov/offices/ocio/itsecurity/index.html>. For policy information considered sensitive, the documents will be identified as such in the ADL and made available through the Contracting Officer.

(c) Definitions.

(1) IT resources means any hardware or software or interconnected system or subsystem of equipment, that is used to process, manage, access, or store electronic information.

(2) NASA Electronic Information is any data (as defined in the Rights in Data clause of this contract) or information (including information incidental to contract administration, such as financial, administrative, cost or pricing, or management information) that is processed, managed, accessed or stored on an IT system(s) in the performance of a NASA contract.

(3) IT Security Management Plan--This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. Unlike the IT security plan, which addresses the IT system, the IT Security Management Plan addresses how the contractor will manage personnel and processes associated with IT Security on the instant contract.

(4) IT Security Plan--this is a FISMA requirement; see the ADL for applicable requirements. The IT Security Plan is specific to the IT System and not the contract. Within 30 days after award, the contractor shall develop and deliver an IT Security Management Plan to the Contracting Officer; the approval authority will be included in the ADL. All contractor personnel requiring physical or logical access to NASA IT resources must complete NASA's annual IT Security Awareness training. Refer to the IT Training policy located in the IT Security Web site at <https://itsecurity.nasa.gov/policies/index.html>.

(d) The contractor shall afford Government access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection (to include vulnerability testing), investigation and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of NASA Electronic Information or to the function of IT systems operated on behalf of NASA, and to preserve evidence of computer crime.

(e) At the completion of the contract, the contractor shall return all NASA information and IT resources provided to the contractor during the performance of the contract in accordance with retention documentation available in the ADL. The contractor shall provide a listing of all NASA Electronic information and IT resources generated in performance of the contract. At that time, the contractor shall request disposition instructions from the Contracting Officer. The Contracting Officer will provide disposition instructions within 30 calendar days of the contractor's request. Parts of the clause and referenced ADL may be waived by the contracting officer, if the contractor's ongoing IT security program meets or exceeds the requirements of NASA Procedural Requirements (NPR) 2810.1 in effect at time of award. The current version of NPR 2810.1 is referenced in the ADL. The contractor shall submit a written waiver request to the Contracting Officer within 30 days of award. The waiver request will be reviewed by the Center IT Security Manager. If approved, the Contractor Officer will notify the contractor, by contract modification, which parts of the clause or provisions of the ADL are waived.

(f) The contractor shall insert this clause, including this paragraph in all subcontracts that process, manage, access or store NASA Electronic Information in support of the mission of the Agency.

(End of clause)

1852.208-81 Restrictions on Printing and Duplicating.

As prescribed in 1808.870, insert the following clause:

RESTRICTIONS ON PRINTING AND DUPLICATING

(NOVEMBER 2004)

(a) The Contractor may duplicate or copy any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101-9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term "printing" includes the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) The Contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10-3/4 by 14-1/4 inches. A "production unit" is one sheet, size 8-1/2 x 11 inches (215 x 280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (c) of this clause are unallowable without prior written approval of the Contracting Officer. If the Contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating or copying, it immediately shall provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations, NFS 1808.802, and NPR 1490.5, NASA Procedural Requirements for Printing, Duplicating, and Copying Management.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

1852.209-70 Product Removal from Qualified Products List.

As prescribed in 1809.206-71, insert the following clause:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST

(DECEMBER 1988)

If, during the performance of this contract, the product being furnished is removed from the Qualified Products List for any reason, the Government may terminate the contract for Default pursuant to the default clause of the contract.

(End of clause)

1852.209-71 Limitation of Future Contracting.

As prescribed in 1809.507-2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.507-2:

LIMITATION OF FUTURE CONTRACTING

(DECEMBER 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5--Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

(End of clause)

1852.209-72 Composition of the Contractor.

As prescribed in 1809.670, insert the following clause:

**COMPOSITION OF THE CONTRACTOR
(DECEMBER 1988)**

If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract.

(End of clause)

1852.211-70 Packaging, Handling, and Transportation

As prescribed in 1811.404-70, insert the following clause:

**PACKAGING, HANDLING, AND TRANSPORTATION
(SEPTEMBER 2005)**

(a) The Contractor shall comply with NASA Procedural Requirements (NPR) 6000.1, "Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components", as may be supplemented by the statement of work or specifications of this contract, for all items designated as Class I, II, or III.

(b) The Contractor's packaging, handling, and transportation procedures may be used, in whole or in part, subject to the written approval of the Contracting Officer, provided (1) the Contractor's procedures are not in conflict with any requirements of this contract, and (2) the requirements of this contract shall take precedence in the event of any conflict with the Contractor's procedures.

(c) The Contractor must place the requirements of this clause in all subcontracts for items that will become components of deliverable Class I, II, or III items.

(End of clause)

1852.215-77 Preproposal/Pre-bid Conference.

As prescribed in 1815.209-70(a), insert the following provision:

**PREPROPOSAL/PRE-BID CONFERENCE
(DECEMBER 1988)**

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(End of provision)

1852.215-78 Make or Buy Program Requirements.

As prescribed in 1815.408-70(a), insert the following provision:

**MAKE OR BUY PROGRAM REQUIREMENTS
(FEBRUARY 1998)**

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) [15.407-2](#). The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort.

(b) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(c) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or "buy."

(d) Reasons for (i) categorizing items and work effort as "must make" or "must buy" and (ii) proposing to "make" or "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(End of provision)

1852.215-79 Price Adjustment for "Make-or-Buy" Changes.

As prescribed in 1815.408-70(b), insert the following clause:

**PRICE ADJUSTMENT FOR "MAKE-OR-BUY" CHANGES
(DECEMBER 1988)**

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at [FAR 52.215-21](#), Change or Additions to Make-or-Buy Program, of this contract:

| ITEM DESCRIPTION | MAKE-OR-BUY DETERMINATION |
|---------------------|------------------------------|
| | |

| | |
|--|--|
| | |
|--|--|

(End of clause)

1852.215-81 Proposal Page Limitations.

As prescribed in 1815.209-70(d), insert the following provision:

PROPOSAL PAGE LIMITATIONS

(FEBRUARY 1998)

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

| Proposal Section (List each volume or section) | Page Limit (Specify limit) |
|--|-------------------------------|
| | |
| | |
| | |
| | |

(b) A page is defined as one side of a sheet, 8 1/2" x 11", with at least one inch margins on all sides, using not smaller than 12 point type. Foldouts count as an equivalent number of 8 1/2" x 11" pages. The metric standard format most closely approximating the described standard 8 1/2" x 11" size may also be used.

(c) Title pages and tables of contents are excluded from the page counts specified in paragraph (a) of this provision. In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(d) If final revisions are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of provision)

1852.215-84 Ombudsman.

As prescribed in 1815.7003, insert the following clause:

OMBUDSMAN

(NOVEMBER 2011)

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, whose name, address, telephone number, facsimile number, and e-mail address may be found at: http://prod.nais.nasa.gov/pub/pub_library/Omb.html. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the Agency ombudsman identified at the above URL. Please do not contact the

ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

**ALTERNATE I
(JUNE 2000)**

As prescribed in 1815.7003, insert the following paragraph (c):

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

(End of clause)

1852.215-85 Proposal Adequacy Checklist.

As prescribed in 1815.408-70(c), use the following provision:

**PROPOSAL ADEQUACY CHECKLIST
(MARCH 2014)**

The offeror shall complete the following checklist, providing location of requested information, or an explanation of why the requested information is not provided. In preparation of the offeror's checklist, offerors may elect to have their prospective subcontractors use the same or similar checklist as appropriate.

PROPOSAL ADEQUACY CHECKLIST

| | REFERENCES | SUBMISSION ITEM | PROPOSAL PAGE No. | If not provided EXPLAIN (may use continuation pages traceable to this checklist) |
|-----------------------------|---|---|----------------------|---|
| GENERAL INSTRUCTIONS | | | | |
| 1. | FAR 15.408, Table 15-2, Section I Paragraph A | Is there a properly completed first page of the proposal per FAR 15.408 Table 15-2 I.A or as specified in the solicitation? | | |
| 2. | FAR 15.408, Table 15-2, Section I Paragraph A(7) | Does the proposal identify the need for Government-furnished material/tooling/test equipment? Include the accountable contract number and contracting officer contact information if known. | | |
| 3. | FAR 15.408, Table 15-2, Section I Paragraph A(8) | If your organization is subject to Cost Accounting Standards (CAS), does the proposal identify the current status of your CAS Disclosure Statement? Does the proposal identify and explain | | |

| | | | | |
|----|--|--|--|--|
| | | notifications of noncompliance with Cost Accounting Standards Board or Cost Accounting Standards (CAS); any proposal inconsistencies with your disclosed practices or applicable CAS; and inconsistencies with your established estimating and accounting principles and procedures? | | |
| 4. | FAR 15.408, Table 15-2, Section I, Paragraph C(1) FAR 2.101, "Cost or pricing data" | Does the proposal disclose any other known activity that could materially impact the costs? This may include, but is not limited to, such factors as— (1) Vendor quotations; (2) Nonrecurring costs; (3) Information on changes in production methods and in production or purchasing volume; (4) Data supporting projections of business prospects and objectives and related operations costs; (5) Unit-cost trends such as those associated with labor efficiency; (6) Make-or-buy decisions; (7) Estimated resources to attain business goals; and (8) Information on management decisions that could have a significant bearing on costs. | | |
| 5. | FAR 15.408, Table 15-2, Section I Paragraph B | Is an Index of all certified cost or pricing data and information accompanying or identified in the proposal provided and appropriately referenced? | | |
| 6. | FAR 15.403-1(b) | Are there any exceptions to submission of certified cost or pricing data pursuant to FAR 15.403-1(b)? If so, is supporting documentation included in the proposal? (Note questions 18-20.) | | |
| 7. | FAR 15.408, Table 15-2, Section I Paragraph C(2)(i) | Does the proposal disclose the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data? | | |

| | | | | |
|-----|--|---|--|--|
| 8. | FAR 15.408, Table 15-2, Section I Paragraph C(2)(ii) | Does the proposal disclose the nature and amount of any contingencies included in the proposed price? | | |
| 9. | FAR 15.408 Table 15-2, Section II, Paragraph A or B | Does the proposal explain the basis of all cost estimating relationships (labor hours or material) proposed on other than a discrete basis? | | |
| 10. | FAR 15.408, Table 15-2, Section I Paragraphs D and E | Is there a summary of total cost by element of cost and are the elements of cost cross-referenced to the supporting cost or pricing data? (Breakdowns for each cost element must be consistent with your cost accounting system, including breakdown by year.) | | |
| 11. | FAR 15.408, Table 15-2, Section I Paragraphs D and E | If more than one Contract Line Item Number (CLIN) or sub Contract Line Item Number (sub-CLIN) is proposed as required by the RFP, are there summary total amounts covering all line items for each element of cost and is it cross-referenced to the supporting cost or pricing data? | | |
| 12. | FAR 15.408, Table 15-2, Section I Paragraph F | Does the proposal identify any incurred costs for work performed before the submission of the proposal? | | |
| 13. | FAR 15.408, Table 15-2, Section I Paragraph G | Is there a Government forward pricing rate agreement (FPRA)? If so, the offeror shall identify the official submittal of such rate and factor data. If not, does the proposal include all rates and factors by year that are utilized in the development of the proposal and the basis for those rates and factors? | | |

COST ELEMENTS

MATERIALS AND SERVICES

| | | | | |
|-----|---|---|--|--|
| 14. | FAR 15.408, Table 15-2, Section II Paragraph A | Does the proposal include a consolidated summary of individual material and services, frequently referred to as a Consolidated Bill of Material | | |
|-----|---|---|--|--|

| | | | | |
|---|--|--|--|--|
| | | (CBOM), to include the basis for pricing? The offeror's consolidated summary shall include raw materials, parts, components, assemblies, subcontracts and services to be produced or performed by others, identifying as a minimum the item, source, quantity, and price. | | |
| SUBCONTRACTS (Purchased materials or services) | | | | |
| 15. | FAR 15.404-3(c) FAR 52.244-2 | Per the thresholds of FAR 15.404-3(c), Subcontract Pricing Considerations, does the proposal include a copy of the applicable subcontractor's certified cost or pricing data? | | |
| 16. | FAR 15.408, Table 15-2, Note 1; Section II Paragraph A | Is there a price/cost analysis establishing the reasonableness of each of the proposed subcontracts included with the proposal? If the offeror's price/cost analyses are not provided with the proposal, does the proposal include a matrix identifying dates for receipt of subcontractor proposal, completion of fact finding for purposes of price/cost analysis, and submission of the price/cost analysis? | | |
| EXCEPTIONS TO CERTIFIED COST OR PRICING DATA | | | | |
| 17. | FAR 52.215-20 FAR 2.101, "commercial item" | Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial items proposed either at the prime or subcontractor level, in accordance with provision 52.215-20? a. Has the offeror specifically identified the type of commercial item claim (FAR 2.101 commercial item definition, paragraphs (1) through (8)), and the basis on which the item meets the definition? b. For modified commercial items (FAR 2.101 commercial item definition paragraph (3)); did the offeror classify the modification(s) as either— | | |

| | | | | |
|--------------------------------------|--|---|--|--|
| | | <p>i. A modification of a type customarily available in the commercial marketplace (paragraph (3)(i)); or</p> <p>ii. A minor modification (paragraph (3)(ii)) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403-1(c)(3)(iii)(B)?</p> <p>c. For proposed commercial items “of a type”, or “evolved” or modified (FAR 2.101 commercial item definition paragraphs (1) through (3)), did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)?</p> | | |
| 18. | FAR 15.408, Table 15-2, Section II Paragraph A(1) | Does the proposal support the degree of competition and the basis for establishing the source and reasonableness of price for each subcontract or purchase order priced on a competitive basis exceeding the threshold for certified cost or pricing data? | | |
| INTERORGANIZATIONAL TRANSFERS | | | | |
| 19. | FAR 15.408, Table 15-2, Section II Paragraph A.(2) | For inter-organizational transfers proposed at cost, does the proposal include a complete cost proposal in compliance with Table 15-2? | | |
| 20. | FAR 15.408, Table 15-2, Section II Paragraph A(1) | For inter-organizational transfers proposed at price in accordance with FAR 31.205-26(e), does the proposal provide an analysis by the prime that supports the exception from certified cost or pricing data in accordance with FAR 15.403-1? | | |
| DIRECT LABOR | | | | |
| 21. | FAR 15.408, Table 15-2, Section II Paragraph B | Does the proposal include a time phased (i.e.; monthly, quarterly) breakdown of labor hours, rates and costs by category or skill level? If labor is the allocation | | |

| | | | | |
|-----------------------|--|--|--|--|
| | | base for indirect costs, the labor cost must be summarized in order that the applicable overhead rate can be applied. | | |
| 22. | FAR 15.408, Table 15-2, Section II Paragraph B | For labor Basis of Estimates (BOEs), does the proposal include labor categories, labor hours, and task descriptions, (e.g.; Statement of Work reference, applicable CLIN, Work Breakdown Structure, rationale for estimate, applicable history, and time-phasing)? | | |
| | | | | |
| 23. | FAR subpart 22.10 | If covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), are the rates in the proposal in compliance with the minimum rates specified in the statute? | | |
| INDIRECT COSTS | | | | |
| 24. | FAR 15.408, Table 15-2, Section II Paragraph C | Does the proposal indicate the basis of estimate for proposed indirect costs and how they are applied? (Support for the indirect rates could consist of cost breakdowns, trends, and budgetary data.) | | |
| OTHER COSTS | | | | |
| 25. | FAR 15.408, Table 15-2, Section II Paragraph D | Does the proposal include other direct costs and the basis for pricing? If travel is included does the proposal include number of trips, number of people, number of days per trip, locations, and rates (e.g. airfare, per diem, hotel, car rental, etc)? | | |
| 26. | FAR 15.408, Table 15-2, Section II Paragraph E | If royalties exceed \$1,500 does the proposal provide the information/data identified by Table 15-2? | | |
| 27. | FAR 15.408, Table 15-2, Section II Paragraph F | When facilities capital cost of money is proposed, does the proposal include submission of Form CASB-CMF or reference to an FPRA/FPRP and show the | | |

| | | | | |
|--|---|--|--|--|
| | | calculation of the proposed amount? | | |
| FORMATS FOR SUBMISSION OF LINE ITEM SUMMARIES | | | | |
| 28. | FAR 15.408, Table 15-2, Section III | Are all cost element breakdowns provided using the applicable format prescribed in FAR 15.408, Table 15-2 III? (or alternative format if specified in the request for proposal) | | |
| 29. | FAR 15.408, Table 15-2, Section III Paragraph B | If the proposal is for a modification or change order, have cost of work deleted (credits) and cost of work added (debits) been provided in the format described in FAR 15.408, Table 15-2.III.B? | | |
| 30. | FAR 15.408, Table 15-2, Section III Paragraph C | For price revisions/redeterminations, does the proposal follow the format in FAR 15.408, Table 15-2.III.C? | | |
| OTHER | | | | |
| 31. | FAR 16.4 | If an incentive contract type, does the proposal include offeror proposed target cost, target profit or fee, share ratio, and, when applicable, minimum/maximum fee, ceiling price? | | |
| 32. | FAR 16.203-4 and FAR 15.408 Table 15-2, Section II, Paragraphs A, B, C, and D | If Economic Price Adjustments are being proposed, does the proposal show the rationale and application for the economic price adjustment? | | |
| 33. | FAR 52.232-28 | If the offeror is proposing Performance-Based Payments did the offeror comply with FAR 52.232-28? | | |
| 34. | FAR 15.408(n) FAR 52.215-22 FAR 52.215-23 | Excessive Pass-through Charges– Identification of Subcontract Effort: If the offeror intends to subcontract more than 70% of the total cost of work to be performed, does the proposal identify: (i) the amount of the offeror’s indirect costs and profit applicable to the work to be performed by the proposed subcontractor(s); and (ii) | | |

| | | | | |
|--|--|---|--|--|
| | | a description of the added value provided by the offeror as related to the work to be performed by the proposed subcontractor(s)? | | |
|--|--|---|--|--|

(End of provision)

1852.216-73 Estimated Cost and Cost Sharing.

As prescribed in 1816.307-70(a), insert the following clause:

**ESTIMATED COST AND COST SHARING
(DECEMBER 1991)**

(a) It is estimated that the total cost of performing the work under this contract will be \$.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as \$ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

1852.216-74 Estimated Cost and Fixed Fee.

As prescribed in 1816.307-70(b), insert the following clause:

**ESTIMATED COST AND FIXED FEE
(DECEMBER 1991)**

The estimated cost of this contract is exclusive of the fixed fee of . The total estimated cost and fixed fee is .

(End of clause)

1852.216-75 Payment of Fixed Fee.

As prescribed in 1816.307-70(c), insert the following clause:

**PAYMENT OF FIXED FEE
(DECEMBER 1988)**

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

1852.216-76 Award Fee for Service Contracts.

As prescribed in 1816.406-70(a), insert the following clause:

**AWARD FEE FOR SERVICE CONTRACTS
(APRIL 2012)**

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with [identify performance evaluation plan]. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The [insert payment office] will make payment based on [Insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer].

(d) The Contracting Officer may direct the withholding of earned award fee payments until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest relative to an orderly and timely closeout of the contract. This reserve shall not exceed 15 percent of the contract's total potential award fee or \$100,000, whichever is less.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at [identify location of award fee amounts]. Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f)(1) Provisional award fee payments [insert "will" or "will not", as applicable] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly)] basis. The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of [Insert a percent not to exceed 80 percent] or the prior period's evaluation score.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. If provisional payments exceed the final evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) If the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate.

(4) Provisional award fee payments [insert "will" or "will not", as appropriate] be made prior to the first award fee determination by the Government.

(g) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405-272(a).]

(End of clause)

1852.216-77 Award Fee for End Item Contracts.

As prescribed in 1816.406-70(b), insert the following clause:

**AWARD FEE FOR END ITEM CONTRACTS
(APRIL 2012)**

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is "poor/unsatisfactory."

(b) Beginning 6* months after the effective date of this contract, the Government will evaluate the Contractor's interim performance every 6* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with [identify performance evaluation plan] to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in [Insert "monthly", or less frequent period] installments based on the percent of completion of the work as determined by the Contracting Officer.

(2) Interim award fee payments will be made to the Contractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that period less any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will [insert "not" if applicable] be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly) basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score (see [insert applicable cite]). Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently substantially exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is "poor/unsatisfactory," the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance).

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government the difference between the final award fee determination and the cumulative interim (and provisional, if applicable) fee payments. If the final award fee evaluation is "poor/unsatisfactory", any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the [insert payment office] based on [Insert method of making award fee payment, e.g., issuance of a unilateral modification by the Contracting Officer].

(d) The Contracting Officer may direct the withholding of interim award fee payments until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the

Government's interest relative to an orderly and timely closeout of the contract. This reserve shall not exceed 15 percent of the contracts total potential award fee or \$100,000, whichever is less.

(e) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405-272(a).]

(End of clause)

1852.216-78 Firm Fixed Price.

As prescribed in 1816.202-70, insert the following clause:

**FIRM FIXED PRICE
(DECEMBER 1988)**

The total firm fixed price of this contract is \$[Insert the appropriate amount].

(End of clause)

1852.216-80 Task Ordering Procedure.

As prescribed in 1816.506-70, insert the following clause:

**TASK ORDERING PROCEDURE
(OCTOBER 1996)**

(a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following data:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within ____ calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

- (e) The Contractor shall provide acknowledgment of receipt to the Contracting Officer within _____ calendar days after receipt of the task order.
- (f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.
- (g) The Contracting Officer may amend tasks in the same manner in which they were issued.
- (h) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail.
- (End of clause)

**ALTERNATE I
(OCTOBER 1996)**

As prescribed in 1816.506-70, insert the following paragraph (i) if the contract does not include 533M reporting:

(i) Contractor shall submit monthly task order progress reports. As a minimum, the reports shall contain the following information:

- (1) Contract number, task order number, and date of the order.
- (2) Task ceiling price.
- (3) Cost and hours incurred to date for each issued task.
- (4) Costs and hours estimated to complete each issued task.
- (5) Significant issues/problems associated with a task.
- (6) Cost summary of the status of all tasks issued under the contract.

1852.216-81 Estimated Cost.

As prescribed in 1816.307-70(d), insert the following clause:

**ESTIMATED COST
(DECEMBER 1988)**

The total estimated cost for complete performance of this contract is \$[Insert total estimated cost of the contract]. See FAR clause [52.216-11](#), Cost Contract--No Fee, of this contract.

(End of clause)

1852.216-83 Fixed Price Incentive.

As prescribed in 1816.406-70(c), insert the following clause:

**FIXED PRICE INCENTIVE
(OCTOBER 1996)**

The target cost of this contract is \$ _____. The Target profit of this contract is \$ _____. The target price (target cost plus target profit) of this contract is \$ _____. [The ceiling price is \$ _____.]

The cost sharing for target cost underruns is:

Government _____percent Contractor _____percent.

The cost sharing for target cost overruns is:

Government _____percent Contractor _____percent.

(End of clause)

1852.216-84 Estimated Cost and Incentive Fee.

As prescribed in 1816.406-70(d), insert the following clause:

**ESTIMATED COST AND INCENTIVE FEE
(OCTOBER 1996)**

The target cost of this contract is \$ _____. The target fee of this contract is \$ _____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract are \$ _____.

The maximum fee is \$_____.

The minimum fee is \$_____.

The cost sharing for cost underruns is:

Government _____percent Contractor _____percent.

The cost sharing for cost overruns is:

Government _____percent Contractor _____percent.

(End of clause)

1852.216-85 Estimated Cost and Award Fee.

As prescribed in 1816.406-70(e), insert the following clause:

ESTIMATED COST AND AWARD FEE (SEPTEMBER 1993)

The estimated cost of this contract is \$ _____. The maximum available award fee, excluding base fee, if any, is \$ _____. The base fee is \$ _____. Total estimated cost, base fee, and maximum award fee are \$ _____.

(End of clause)

ALTERNATE I (SEPTEMBER 1993)

As prescribed in 1816.406-70(e), insert the following sentence at the end of the clause:

The maximum positive performance incentive is \$ _____. The maximum negative performance incentive is (1) _____.

(1) For research development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [\$total potential award fee amount, including any base fee)].

(End of clause)

1852.216-87 Submission of Vouchers for Payment.

As prescribed in 1816.307-70(e), insert the following clause:

SUBMISSION OF VOUCHERS FOR PAYMENT (MARCH 1998)

(a) The designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract is indicated below. Public vouchers for payment of costs shall include a reference to the number of this contract.

(b) (1) If the contractor is authorized to submit interim cost vouchers directly to the NASA paying office, the original voucher should be submitted to:

[Insert the mailing address for submission of cost vouchers]

(2) For any period that the Defense Contract Audit Agency has authorized the Contractor to submit interim cost vouchers directly to the Government paying office, interim vouchers are not required to be sent to the Auditor, and are considered to be provisionally approved for payment, subject to final audit.

(3) Copies of vouchers should be submitted as directed by the Contracting Officer.

(c) If the contractor is not authorized to submit interim cost vouchers directly to the paying office as described in paragraph (b), the contractor shall prepare and submit vouchers as follows:

(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment to:

[Insert the appropriate NASA or DCAA mailing office address for submission of cost vouchers]

(2) Five copies of SF 1034, SF 1035A, or equivalent Contractor's attachment to the following offices by insertion in the memorandum block of their names and addresses:

(i) Copy 1 NASA Contracting Officer

(ii) Copy 2 Auditor

- (iii) Copy 3 Contractor
- (iv) Copy 4 Contract administration office; and
- (v) Copy 5 Project management office.

(3) The Contracting Officer may designate other recipients as required.

(d) Public vouchers for payment of fee shall be prepared similarly to the procedures in paragraphs (b) or (c) of this clause, whichever is applicable, and be forwarded to:
[insert the mailing address for submission of fee vouchers]

This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(e) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

(End of clause)

1852.216-88 Performance Incentive.

As prescribed in 1816.406-70(f), insert the following clause:

PERFORMANCE INCENTIVE

(JANUARY 1997)

(a) A performance incentive applies to the following hardware item(s) delivered under this contract: (1)

The performance incentive will measure the performance of those items against the salient hardware performance requirement, called "unit(s) of measurement," e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes effective when the hardware is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) Standard performance level. At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for (1) is established as follows: (2)

(c) Positive incentive. The Contractor earns a separate positive incentive amount for each hardware item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of \$ (3) per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (4)

(d) Negative incentive. The Contractor will pay to the Government a negative incentive amount for each hardware item that fails to achieve the standard performance level. The amount to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of \$ (5) . The units of measurement and the incentive amounts associated with achieving each unit are shown below: (6)

(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.

(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.

(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that

such payments shall not be more frequent than monthly. When performance ceases or the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(f) If performance cannot be demonstrated, through no fault of the Contractor, within [insert number of months or years] after the date of hardware acceptance by the Government, the Contractor will be paid [insert percentage] of the maximum performance incentive.

(g) The decisions made as to the amount(s) of positive or negative incentives are subject to the Disputes clause.

(1) Insert applicable item number(s) and/or nomenclature.

(2) Insert a specific unit of measurement for each hardware item listed in (1) and each salient characteristic, if more than one.

(3) Insert the maximum positive performance incentive amount (see 1816.402-270(e)(1) and (2)).

(4) Insert all units of measurement and associated dollar amounts up to the maximum performance incentive.

(5) Insert the appropriate amount in accordance with 1816.402-270(e).

(6) Insert all units of measurement and associated dollar amounts up to the maximum negative performance incentive.

(End of clause)

1852.216-89 Assignment and Release Forms.

As prescribed in 1816.307-70(f), insert the following clause:

ASSIGNMENT AND RELEASE FORMS

(JULY 1997)

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause [52.216-7](#), Allowable Cost and Payment, and FAR clause [52.216-13](#), Allowable Cost and Payment (Facilities):

NASA Form 778, Contractor's Release;

NASA Form 779, Assignee's Release;

NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; and

NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

Computer generated forms are acceptable, provided that they comply with FAR clause [52.253-1](#), Computer Generated Forms.

(End of clause)

1852.216-90 Allowability of legal costs incurred in connection with a whistleblower proceeding.

As prescribed in 216.307-70(g), use the following clause:

ALLOWABILITY OF LEGAL COSTS INCURRED IN CONNECTION WITH A WHISTLEBLOWER PROCEEDING

(AUGUST 2014)

Pursuant to section 827 of the National Defense Authorization Act for Fiscal year 2013 (Pub. L. 112-239), notwithstanding FAR clause 52.216-7, Allowable Cost and Payment--

(1) The restrictions of FAR 31.205-47(b) on allowability of costs related to legal and other proceedings also apply to any proceeding brought by a contractor employee submitting a complaint under 10 U.S.C. 2409, entitled "Contractor employees: protection from reprisal for disclosure of certain information;" and

(2) Costs incurred in connection with a proceeding that is brought by a contractor employee submitting a complaint under 10 U.S.C. 2409 are also unallowable if the result is an order to take corrective action under 10 U.S.C. 2409.

(End of clause)